



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE  
DIRECTOR

August 11, 1993  
AO-93-17

Rhonda Kaplan, Treasurer  
Scott Harshbarger Committee  
P.O. Box 9042  
Boston, MA 02114

Re: Ordinary Hospitality

Dear Ms. Kaplan:

I am writing in response to your February 11, 1993, letter requesting an advisory opinion regarding the meaning of the phrase "exercise of ordinary hospitality" as used in the campaign finance law, M.G.L. c.55. I apologize for the delay in my response.

Specifically, you have stated that in March of 1991 a fundraising event was held on behalf of the Scott Harshbarger Committee ("Committee") on the premises of a business owned by the host. The Committee paid the customary rent for the premises in the amount of \$200.00. Refreshments were provided from a local restaurant and billed to the host. It was your understanding that the host generally entertains in this manner. The Committee never received an invoice for the refreshments nor did the host of the event request that the Committee consider the cost of the refreshments as an in-kind contribution. Because it was your understanding that the host often entertained guests in this manner you considered the food as an "exercise of ordinary hospitality" under the definition of a contribution in M.G.L. c.55, s.1, and therefore did not report it as a contribution.

In light of the forgoing you have asked the following questions:

- (1) Does the cost of the refreshments constitute a contribution?
- (2) If the cost of the refreshments are a contribution, should the Committee reports be amended to reflect this contribution and/or should the Committee reimburse the host and record the expenditure?
- (3) What guidelines should the Committee establish to guide it in the future with regard to "the exercise of ordinary hospitality?"

Rather than answer each of your questions separately, I will address them in the context of this opinion.

M.G.L. c.55, s.1 defines the word "contribution" broadly to include not only contributions of money but contributions of "anything of value" or so-called "in-kind" contributions. The statutory definition of contribution expressly includes gifts, loans, advances, transfers between political committees, compensation for personal services, discounts or rebates not available to other candidates and the general public and the forgiveness of indebtedness. In fact, only two types of activity or contributions are excepted from this broad definition.

The first exception is the "rendering of services by speakers . . . and others" along with "personal expenses as may be incidental thereto." The second exception, as you noted, are contribution made in "the exercise of ordinary hospitality."

Although neither the phrase nor any of the individual words are defined by statute, the meaning of this phrase is clearly based upon the exception's underlying purposes as well as the common meaning of the words themselves. The key words in this phrase are "ordinary" and "hospitality." As the Supreme Judicial Court stated in Franki Foundation Co. v. State Tax Commission 361 Mass. 614 (1972), a case which turned on a word or phrase which was not defined by the statute in question:

In such a case, "the natural import of words according to the ordinary and approved usage of language when applied to the subject matter of the act, is to be considered as expressing the intention of the Legislature." Franki at 617 quoting with approval from Boston & Maine R.R. v. Billerica, 262 Mass. 439, 444.<sup>1</sup>

In Webster's Third New International Dictionary, G & C Merriam Company, 1961 Edition, the word "hospitality" is defined, in part, as "the cordial . . . reception and entertainment of guests or strangers socially." Webster's defines the word "ordinary" as "occurring or encountered in the usual course of events: not uncommon or exceptional: not remarkable: routine, normal [as in] the ordinary experience common to everyone." While Black's Law Dictionary (6th Edition) 1990 does not define "hospitality," it does define "ordinary." Black's defines "ordinary," in part, as:

not characterized by peculiar or unusual circumstances; belonging to, exercised by, or characteristic of, the normal or average individual (emphasis added).

Reading these definitions together it is this office's opinion that the phrase "ordinary hospitality" refers to the common, average or unexceptional reception and/or entertainment of guests. Hence "ordinary hospitality" refers not to hospitality that might be customary for a particular individual but refers to a generally accepted level of hospitality. Therefore, for example, this office has orally advised on a number of occasions that a host may provide "coffee and donuts" or "wine, cheese and crackers" at a house party for a candidate but may not hire a caterer, a tent and a band for a house party for a candidate even if such a practice is customary for that particular individual.

The above interpretation of the phrase "ordinary hospitality" is consistent with the purpose of this exception to the general rule that a contribution is "anything of value." In this office's opinion, the purpose of the exception stems primarily from practical considerations.

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1. See also Sutherland Statutory Construction (5th Ed). "Usually words of a statute must be construed in accordance with their ordinary and common meaning unless they have acquired technical meaning or unless a definite meaning is apparent or indicated by the context of the words." Sutherland at s.47.27.

First, the provision of ordinary hospitality is the level of hospitality that one would offer any stranger or guest being welcomed to one's home, or business, in order to make that person feel welcome. Hence, it would be given to anyone whether or not the individual were a candidate. Second, there are simple practical considerations of valuation that would be impossible for the host and candidate to account for and for this office to monitor in many cases if ordinary hospitality were to be considered a contribution. While valuation would be possible in some situations, other situations would prove almost impossible. How, for example, would the contribution of a pot luck supper donated by various neighbors be calculated?

With the above framework in mind, I can answer your question. Although the refreshments were provided from a local restaurant in a manner consistent with the host's customary practice of entertainment at his place of business, such activity not constitute the "common and average or unexceptional reception and/or entertainment of guests" in this office's opinion.

First, the event was as I understand it primarily a fundraising event.<sup>2</sup> In addition, the Committee paid the customary rent for the use of the premises, a fact is fundamentally inconsistent with the concept of "ordinary hospitality."<sup>3</sup> Finally, there are clearly no problems of valuation created since the refreshments were provided by a local restaurant and were, presumably, charged to the host. For all the above reasons, it is this office's opinion that the provision of refreshments in this case would constitute an in-kind contribution unless paid for by the Committee.

The reporting requirements follow logically from the office's conclusion.

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2. The mere existence of a fundraising event is not incompatible with the exercise of "ordinary hospitality." For example, a supporter could have a house party for a candidate with an admission charge and serve drinks and food consistent with "ordinary hospitality." The Committee would not be required to pay rent for the use of the home or for the common or average refreshments provided. However, the less common or exceptional the event, i.e. the payment of rent, production and sale of tickets and invitations, catered refreshments, etc., the more likely that the event and costs associated with the event constitute an expenditure which a committee must pay for or an in-kind contribution which a committee must report and which is subject to the statute's contribution reporting and limitation requirements.

3. Because of our view of this matter, the payment of rent was required in this case. However, our conclusion is not intended to imply that each time a candidate is invited to visit a corporation, or other place of business, to meet with officers and/or employees of the corporation that the candidate or political committee must calculate and determine the value of such a meeting or visit and the refreshments provided. A corporation acting through its officers and/or employees does not make a contribution when merely extending "ordinary hospitality" nor is "ordinary hospitality" limited to the home.

If the host wishes to make an in-kind contribution he may do so provided that the value of the refreshments plus all other contributions (including other in-kind contributions) for the calendar year are equal or less than \$1,000.<sup>4</sup> See M.G.L. c.55, s.7. If an in-kind contribution is made the fair market value should be reported on Form CPF D102 Schedule C which is filed by depository committees such as yours at the end of each calendar year. If the in-kind contribution was made in 1991 Form CPF 102A should be filed amending the 1992 January 10th report (Year End Report).

If the host does not wish to make an in-kind contribution or is unable to make such a contribution due to contribution limitations, the Committee should pay for the refreshments as it would any other reasonable and necessary expenditure related to a constitutional candidate's campaign. In addition, prior reports should be amended to reflect what was in retrospect an outstanding obligation or liability of the Committee See M.G.L. c.55, ss.6 and 18 and 970 CMR 2.05 et. seq.

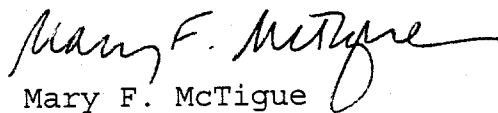
In conclusion, and for future reference, the fundamental question that a political committee must ask and answer relative to the "exercise of ordinary hospitality" is not whether the actions are characteristic of a particular individual but whether the actions are characteristic of the normal or average individual under all the circumstances of the situation.<sup>5</sup>

For all the above reasons it is this office's opinion that the provision of the refreshments as described above was a "thing of value" which must be paid for as an expenditure of the Committee or treated as an in-kind contribution subject to the \$1,000 limitation of the campaign finance law.

This opinion has been rendered solely on the basis of the representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact OCPF should you have additional questions about this or any other campaign finance matter.

Very truly yours,

  
Mary F. McTigue  
Director

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4. Here I assume that the host paid personally and not through the corporation for the refreshments. If the corporation paid for the refreshments then the Committee could not under these circumstances accept an in-kind contribution but would have to pay the corporation for the costs of the refreshments. See M.G.L. c.55, s.8.

5. The actual value of the hospitality provided is not necessarily determinative. For example, offering your home for the night to a candidate or campaign worker and providing that person with supper and breakfast would in some situations constitute "ordinary hospitality" even though it may have significant value. In each case the totality of the situation must be viewed.